

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5818 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JANTSING @ JANTO S/O PREMSING @ THAKURSING SARDAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHVAH for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Ms. D.R. Kachhvah for the petitioner and learned AGP Mr.D.P.Joshi for the respondents. The detention order dated 16.1.99 passed by respondent no.1 - Commissioner of Police, Ahmedabad City in exercise of power conferred under section 3(1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure :C inter alia indicate that four criminal cases are registered against the petitioner in between 23.7.98 and 9.9.98 at Naranpura and Sabarmati Police Stations of Ahmedabad for the offences made punishable under the Indian Penal Code. Furthermore, two witnesses on assurance of anonymity have given information about the anti-social activity of the petitioner vide their statements dated 13.11.98 and 9.11.98 respectively. On the basis of the aforesaid material, respondent no.1 as detaining authority has come to conclusion that the petitioner is a "dangerous person" within the meaning of section 2(c). That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order, it is necessary to pass the detention order and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that non consideration of less drastic remedy like cancellation of bail available to the detaining authority has vitiated the subjective satisfaction reached by the detaining authority rendering the detention order invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, the detaining authority has observed in the grounds of detention in penultimate para that the petitioner is getting released on bail and continuing his anti-social activity and as such, it is necessary to pass the detention order. The said observation discloses that the detaining authority has failed to consider the aspect of cancellation of bail under section 437(5) of Cr.P.C. though available in respect to a pending case registered against the petitioner and as such, the subjective satisfaction reached by the detaining authority having been vitiated, the impugned order is rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed and the detention order dated 16.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Jantasing @ Janto S/o. Premsing Thakursing Sardar is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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